

UNITED STATES DISTRICT COURT
MIDDLE DIVISION OF ALABAMA
NORTHERN DIVISION

2007 OCT 19 A 11:50

Gene Martin Auto Sales, Inc.,)

Plaintiff,)

vs.)

Case Number: 2:07cv937-MEF

Kevin Davis, Jonathan Benson,)
Kenneth Harmon, Lt. Lockhart,)
Jason Ously, Michael Poe,)
and John Shannon,)

Defendants.)

COMPLAINT

1. This court has jurisdiction of this case under the provisions of the Fourth and Fourteenth Amendments of the Constitution of the United States, and 42 USC §1983.

2. Gene Martin Auto Sales, Inc., the plaintiff in the above case, is a corporation organization under the laws of the state of Alabama with its principal place of business at 26890 Highway 231 North, Jemison, Chilton County, Alabama 35085. It is a franchise dealer for Massey-Ferguson farming equipment and also operates a used car sales business, a service shop, a body shop, and parts department. It has 47 employees.

3. The defendants are the sheriff and deputy sheriffs of Chilton County, Alabama. At all relevant times they were acting under color of state law.

4. On or about 4:30 p.m. on October 12, 2007, the defendants took possession of the plaintiff's place of business, closed it down, and seized plaintiff's checkbooks, records, inventory, and other items of personal property. They still have possession. They did not have any probable cause or legal authority. They represented to the plaintiff that they had a search warrant but refused to show it to the plaintiff or provide a copy as required by Alabama law.. Actually, no search warrant was issued until about 7:30 p.m. on October 12, 2007.

5. The affidavit of the plaintiff's president, Gene Martin, is attached and incorporated herein.

6. As a proximate consequence of the defendant's said actions, the plaintiff has suffered damages in loss of business, is in danger of losing its franchise, and has suffered and continues to suffer irreparable damages.

WHEREFORE, the plaintiff claims damages against the defendants in the amount of \$10,000,000. Plaintiff also requests the court to issue a temporary and permanent injunction, enjoining the defendants from further interfering with the operation of the plaintiff's business, and requiring the defendants to return to the plaintiff possession of its real estate, all of its checkbooks, records, and other personal

property. The plaintiff demands such other relief to which it may be entitled to in the premises.



Charles Cleveland, Attorney for
Gene Martin Auto Sales, Inc.

Cleveland & Cleveland, P. C.
2330 Highland Avenue South
Birmingham, Alabama 35205
(205) 322-1811
(205) 322-1848 (fax)
E-mail: ClevelandAtty@hotmail.com

Please serve the defendants at:

Kevin Davis
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

Jonathan Benson
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

Kenneth Harmon
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

Lt. Lockhart
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

Jason Ously
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

Michael Poe
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

John Shannon
Chilton County Sheriff's Department
500 Second Avenue North
Clanton, Alabama 35045

UNITED STATES DISTRICT COURT
MIDDLE DIVISION OF ALABAMA
NORTHERN DIVISION

Gene Martin Auto Sales, Inc., 2007 OCT 19 A 11:50

Plaintiff,

vs.

Kevin Davis, Jonathan Benson,
Kenneth Harmon, Lt. Lockhart,
Jason Ously, Michael Poe,
and John Shannon,

Defendants.

CLERK P. HACKETT CLK
U.S. DISTRICT COURT
MIDDLE DIVISION

Case Number:

2:07CV937-MEF

AFFIDAVIT OF GENE MARTIN

This affidavit is made under oath on the affiant's personal knowledge for filing in the above case in support of the plaintiffs moving for a temporary restraining order, or in the alternative, for a preliminary injunction.

1. I am the president of Gene Martin Auto Sales, Inc. the plaintiff in the above case.
2. Gene Martin Auto Sales, Inc. is a corporation organized under the laws of the State of Alabama. Its principal place of business is located at 26890 U. S. Highway 31 N., Jemison, Chilton County, Alabama 35085. It is a franchise dealer for Massey-Ferguson farming equipment and also operates a used car sales business, a service shop, a body shop, and parts department. It has 47 employees.
3. The defendants, Kenneth Harmon and Jonathan Benson are deputy sheriffs of Chilton County, Alabama. About 5:00 p.m. on Friday, October 12, 2007, they came to the plaintiff's place of business, and, without any authority but acting under the color of state law, took over control of the plaintiff's place of business and closed it down and are still in possession of the premises. They

represented to the plaintiff's office manager that they had search warrants but refused to show them. Actually, no search were issued until about 7:30 p.m. that evening. Other search warrants were issued on Monday, October 15, 2007. The search warrants were defective and were not issued in accordance with state law. None of them even purported to authorize said defendants to close the plaintiff's business. None of the search warrants named the plaintiff as a party in possession of the items sought.

5. Defendants have refused to provide copies of any search warrants even though plaintiff has requested them.

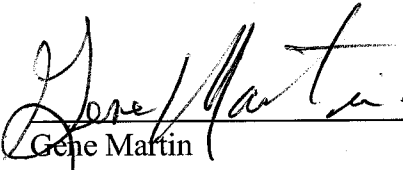
6. The defendants have illegally seized and taken possession of the plaintiff's real estate and have also seized and taken corporate checkbooks, franchise checkbooks, records, inventory, vehicles, computers and computer records, and other items of personal property from the plaintiff's possession.

7. As a result of said defendants' actions the plaintiff has suffered damages in loss of business, is in danger of losing its franchise with Massey-Ferguson, and has suffered and continues to suffer irreparable damages.

8. Therefore, the plaintiff is not able and has not been able to fund payroll checks, pay accounts due, collect payables, or perform any services or sell any products for the income necessary for the plaintiff to exist.

9. The defendants have intercepted U.S. mail delivered to the plaintiff and are continuing to do so. The defendants are opening said mail and, are advising that they will continue to "hold" said mail.

10. The defendants turned away customers of the plaintiff, harassed said customers, and seized the property of customers, blocked entrances to the premises, and turned away other customers. Defendants are continuing the conduct herein described.


Gene Martin

State of Alabama)
Jefferson County)

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, in and for said county and state, did personally appear Gene Martin, who is known to me, and who after being duly sworn by me, says that the facts in the foregoing affidavit are true.

Dated this the 18th day of October, 2007.


Notary Public
My Commission Expires: August 27, 2011

DUPLICATE

Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602000791
Cashier ID: brobinso
Transaction Date: 10/19/2007
Payer Name: JONATHAN LYERLY

CIVIL FILING FEE
For: JONATHAN LYERLY
Case/Party: D-ALM-2-07-CV-000937-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3027
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

GENE MARTIN AUTO SALES INC V. DAVIS
ET AL